

BOARD OF APPEALS CASE NO. 5369	*	BEFORE THE
APPLICANT: John & Rene Pasquinelli	*	ZONING HEARING EXAMINER
REQUEST: Variance to construct an	*	OF HARFORD COUNTY
addition to a non-conforming building within		
the required setback; 2102 Pulaski Highway, *		
Edgewood		Hearing Advertised
	*	Aegis: 8/27/03 & 9/3/03
HEARING DATE: October 8, 2003		Record: 8/29/03 & 9/5/03
	*	

* * * * *

ZONING HEARING EXAMINER'S DECISION

The Applicants, John and Rene Pasquinelli, are requesting a variance, pursuant to Section 267-39B, Table XII, of the Harford County Code, to allow an addition within the required 40 foot rear yard set back (9 feet proposed), and less than the minimum building or use setback of 25 feet (9 feet proposed). The Applicants are also requesting a variance pursuant to Section 267-21, to enlarge or extend a non-confirming building, structure or use, to permit an addition to an existing motor vehicle repair shop in a B3/General Business District.

The subject parcel is located at 2102 Pulaski Highway, Edgewood, Maryland 21040, in the First Election District, and is more particularly identified on Tax Map 65, Grid Number 2F, Parcel 400. The property contains approximately 0.396 acres, more or less.

The Applicant, John Pasquinelli, appeared and testified that he is the owner of JC Discount Tires in Edgewood. He indicated that this is a trade name, and that the corporate entity which actually owns the business is John R. Pasquinelli Enterprises, Inc., a Maryland corporation. Mr. Pasquinelli testified that JC Discount Tires is located at 2102 Pulaski Highway, Edgewood, Maryland, on the U.S. Route 40 business corridor. There are commercial uses located on both sides of the property, as well as on the other side of U. S. Route 40. There are no residences in the area of the subject property. The parcel to the rear is a government owned water treatment facility for Aberdeen Proving Ground.

Case No. 5369 - John and Rene Pasquinelli

Mr. Pasquinelli stated that he had read the Department of Planning and Zoning's Staff Report, and had no changes or corrections to the information contained therein. He also stated that he agrees with all of the conditions set forth in that Report. The witness then referred to photographs, designated as Attachment 8 to the Staff Report, indicating that they depict the commercial nature of both the subject property and surrounding uses. According to Mr. Pasquinelli, JC Discount Tires has been operating on the subject parcel for over 30 years. He has owned the business for the past three years. The business consists of a full service auto garage and an auto parts store. The Applicant indicated that he proposes to construct a 24 foot by 35 foot addition to the central portion of the rear property, in the area backing to the Aberdeen Proving Ground water treatment facility. The addition will be used for storage of tires and auto parts. According to Mr. Pasquinelli, additional storage is needed because all products sold by the business are currently stored inside the auto service bays at night. When the garage opens for business in the morning, all products must be removed from the service bays and placed outside for the day. The witness testified that there is no other location on the subject parcel to build a storage facility due to the placement of the existing buildings, gas pumps, canopy, and underground gasoline storage tanks. He also stated that if the addition were any smaller than the proposed size, it would not provide sufficient space to store the items necessary for the operation of his business.

Mr. Pasquinelli stated that, in his opinion, the granting of the requested variances would not result in any adverse impact to adjoining properties because the addition would be constructed at the rear of the lot, adjacent to a wooded parcel. In response to questions asked by the Hearing Examiner, the witness testified that the proposed addition will be approximately 5,900 square feet, and will be no taller than the existing building. He also stated that the original building, which was constructed between 1954 and 1956, was offset to one side of the property. In addition, the parcel itself is not square, as one of its sides is narrower in width than the other.

Case No. 5369 - John and Rene Pasquinelli

Mr. Anthony McClune, Deputy Director for the Department of Planning and Zoning, appeared and testified regarding the findings of fact and recommendations made by that agency. Mr. McClune verified that the Department recommended approval of the subject request in its September 5, 2003 Staff Report. He testified that the existing building, which is 3,700 square feet in size, became non-conforming with the adoption of the 1982 Zoning Code. He stated that the Department found the subject parcel to be unique because the location of the gas pumps, canopy, underground storage tanks, and the existing non-conforming building make the proposed location the only feasible place for expansion.

According to the witness, the Department is of the opinion that the requested expansion does not require any variances, and that the only issue to be decided pursuant to the subject request is whether the non-conforming structure can be enlarged. Mr. McClune stated that the Applicants requested the two setback variances merely as alternatives to their request for expansion of a non-conforming use. The witness also testified that the existing building is located 29 feet from the rear property line. The original required rear setback was 30 feet, however, the minimum setback was increased to 40 feet with the enactment of the 1982 Zoning Code.

The subject property is located along U.S. Route 40 (Pulaski Highway) in the Commercial Revitalization District, an area occupied primarily by business uses. The parcel located to the rear of the lot is owned by the federal government, and is utilized as a water treatment facility for Aberdeen Proving Ground. That parcel contains both natural resources and flood plain areas. There is a steep drop from the Applicants' property to the utilized portion of the adjacent rear parcel, making development of that lot unlikely. However, a 25 foot minimum building use setback is still required, because the government owned property is zoned R2/Urban Residential.

Case No. 5369 - John and Rene Pasquinelli

According to the witness, the Department of Planning and Zoning found that all provisions of Section 267-21 can be met if the subject application is approved. He indicated that the existing use of the subject parcel will not change if the requested expansion is granted. He also testified that the requested expansion will not exceed 50% of the square footage which existed at the creation of the non-conformity. The gross square footage of the enclosed portion of the existing building was 3,700 square feet when the non-conformity was created. The requested 864 square foot expansion does not exceed 50% of the square footage in existence at the creation of the non-conformity. The witness further testified that the proposed expansion will not exceed height or coverage restrictions. He pointed out that the proposed addition will be constructed on an area which is presently paved and will, therefore, not increase the impervious surface of the property.

Mr. McClune indicated that after consideration of all factors set forth in Section 267-9I of the Harford County Code, the Department had determined that the proposed use would not have any adverse impact on adjacent properties. In addition, he testified that the proposed expansion will not have any affect on traffic in the vicinity of the subject property. The subject property fronts on a busy arterial road, and the proposed addition would be located behind the existing building, and have no impact on U.S. Route 40 (Pulaski Highway).

No witnesses appeared in opposition to the requested variance.

CONCLUSION:

The Applicants, John and Rene Pasquinelli, are requesting a variance, pursuant to Section 267-21 of the Harford County Code, to enlarge or extend a non-confirming building, structure or use, to permit an addition to an existing motor vehicle repair shop in a B3/General Business District. In the alternative, they are requesting variances pursuant to Section 267-39B, Table XII, to allow an addition within the required 40 foot rear yard set back (9 feet proposed), and less than the minimum building or use set back of 25 feet (9 feet proposed).

Case No. 5369 - John and Rene Pasquinelli

The following is a review of applicable code sections, and the Hearing Examiner's findings (*in italics*) regarding each code provision.

Section 267-21 of the Harford County Code provides:

The Board may authorize the extension or enlargement of a non-conforming use, with or without conditions, provided that:

- A. The proposed extension or enlargement does not change to a less restricted and more intense use.

The Hearing Examiner finds that the proposed construction would not change the existing use of the property.

- B. The enlargement or extension does not exceed fifty percent (50%) of the gross square footage in use at the time of the creation of the non-conformity.

The Hearing Examiner finds that the proposed extension does not exceed fifty percent (50%) of the gross square footage in use when the non-conformity was created. The original non-conforming building was 3,700 square feet. The requested 864 square foot expansion will not exceed 50% of the square footage in existence at the creation of the non-conformity.

- C. The enlargement or extension does not violate the height or coverage regulations for the district.

The Hearing Examiner adopts the finding of the Department of Planning and Zoning that the proposed expansion would not violate the height or coverage regulations for the district.

- D. The enlargement or extension would not adversely affect adjacent properties, traffic patterns, or the surrounding neighborhood.

The Hearing Examiner finds that the proposed expansion will not adversely affect adjacent properties, traffic patterns or the surrounding neighborhood. The subject property is surrounded by commercial uses. The property backs to a heavily wooded government owned water treatment facility for Aberdeen Proving Ground. The government property contains natural resource and flood plain areas. In addition, there is a steep drop between the Applicants' property and the utilized portion of the water treatment facility.

Case No. 5369 - John and Rene Pasquinelli

The subject property is fronted by U.S. Route 40 (Pulaski Highway), which is a heavily traveled road utilized as a business corridor. The proposed addition will be built to the rear of the existing building, and it will not affect U. S. Route 40 (Pulaski Highway) in any way.

- E. The limitations, guides and standards set forth in Section 267-9I, Limitations, Guides and Standards, are considered by the Board.

The provisions contained in Section 267-9I are discussed infra.

Section 267-9I of the Harford County Code provides:

Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

- (1) The number of persons living or working in the immediate area.

The Hearing Examiner finds that the request would have no impact on persons living or working in the area of the subject property. There are no residences in the general vicinity of the subject property.

- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.

For the reasons previously stated, the Hearing Examiner finds that the proposed expansion would not adversely affect traffic conditions on U.S. Route 40 (Pulaski Highway).

Case No. 5369 - John and Rene Pasquinelli

- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.

The Hearing Examiner finds that expansion of the existing structure would have no impact on the growth of the neighborhood or the community, and no fiscal impact on the county.

- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.

The proposed construction would not cause any odors, dust, gas, smoke, fumes, vibration, glare or noise.

- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.

The proposed construction would have no impact on public facilities, or on the County's ability to supply such services.

- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.

The Hearing Examiner finds that the operation of an auto parts store and garage complex is a permitted use within the B3 District, and that the requested expansion will not adversely impact adjacent properties or traffic in the vicinity of the subject property.

- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.

Not applicable to this request.

- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.

The Harford County Code allows for the expansion of non-conforming buildings if all required provisions set forth therein are met.

Case No. 5369 - John & Rene Pasquinelli

- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.

Not applicable to this request.

- (10) The preservation of cultural and historic landmarks.

Not applicable to this request.

Having found that the subject request meets or exceeds all requirements of both Section 267-21 and Section 267-9I, the Hearing Examiner recommends approval of Applicant's request for expansion of a non-conforming building, subject to the Applicants obtaining all necessary permits and inspections for the proposed construction.

Date November 7, 2003

Rebecca A. Bryant
Zoning Hearing Examiner